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18 **IN THE UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **SAN FRANCISCO DIVISION**

21 NADA PACIFIC CORPORATION, a
22 California corporation,

23 Plaintiff,

24 v.

25 POWER ENGINEERING AND
26 MANUFACTURING, LTD., an Iowa
27 corporation; and BESSER COMPANY, a
28 Michigan corporation,

Defendants,

v.

AKKERMANN, INC.,

Counterclaimant,

and

NADA PACIFIC CORPORATION, A
CALIFORNIA CORPORATION and BESSER
COMPANY, and Michigan Corporation,

Defendants.

AND RELATED CROSS-ACTION

Case No.: 3:13-CV-04325-LB

**STIPULATED MOTION TO
CONTINUE TRIAL AND MODIFY
CASE MANAGEMENT ORDER**

ORDER

1 Plaintiff Nada Pacific Corporation (“Nada”), Defendant, Cross-Claimant, and
 2 Cross-Claim Defendant Power Engineering and Manufacturing, Ltd. (“PEM”), Cross-
 3 Claim Defendant Akkerman, Inc. (“Akkerman”), and Defendant, Cross-Claimant, and
 4 Cross-Claim Defendant Besser Company (“Besser”) (collectively, the “Parties”) hereby
 5 stipulate and jointly move the Court pursuant to Fed. R. Civ. P. 16(b)(4), Civil L.R. 40-1,
 6 Civil L.R. 7-12, and Civil L.R. 6-2 to continue the trial date presently set for February 23,
 7 2015 for 60 days (or as soon thereafter as the Court’s calendar permits) and to extend all
 8 remaining pretrial deadlines 60 days. In support, the Parties state:

9 **LEGAL STANDARD FOR REQUEST**

10 1. Fed. R. Civ. P. 16(b)(4) provides that the “schedule set forth in the Court’s
 11 Scheduling Order may be modified only for good cause and with the judge’s consent.”

12 2. Civil L.R. 40-1 provides that “No continuance of a scheduled trial date will
 13 be granted except by order of the Court issued in response to a motion made in accordance
 14 with the provisions of Civil L.R. 7.”

15 3. Civil L.R. 7-1(a)(5) provides that a request to the Court for an order may
 16 be presented by stipulation of the affected parties pursuant to Civil L.R. 7-12. In turn,
 17 Civil L.R. 7-12 provides that “Every stipulation requesting judicial action must be in
 18 writing signed by all affected parties or their counsel. A proposed form of order may be
 19 submitted with the stipulation and may consist of an endorsement on the stipulation of the
 20 words, ‘PURSUANT TO STIPULATION, IT IS SO ORDERED,’ with spaces designated
 21 for the date and the signature of the Judge.”

22 4. Civil L.R. 6-2 (a) provides that parties may stipulate under Civil L.R. 7-12
 23 “requesting an order changing time that would affect the date of an event or deadline
 24 already fixed by Court order . . .” Civil L.R. 6-2(a)(1)-(3) requires that such stipulations
 25 be accompanied by a declaration that “(1) Sets forth with particularity, the reasons for the
 26 requested enlargement or shortening of time; (2) Discloses all previous time modifications
 27 in the case, whether by stipulation or Court order; and (3) Describes the effect the
 28 requested time modification would have on the schedule for the case.”

GROUND FOR REQUEST

2 5. On March 27, 2014, the Court held a Fed. R. Civ. P. 16 Case Management
3 Conference. At that conference, the Parties discussed with the Court their belief that the
4 issues in this case could be substantially narrowed, if not resolved entirely, by defendants'
5 filing of motions for summary judgment addressing application of certain key issues,
6 namely the economic loss rule and collateral source rule. Declaration of Justin T.
7 Winquist filed herewith ("Winquist Dec.") ¶ 4. The Parties also discussed with the Court
8 their desire to avoid costly and time consuming discovery beyond those key issues to the
9 extent possible prior to the Court's ruling on the anticipated motions for summary
10 judgment. Winquist Dec. ¶ 4. Following the March 27, 2014 Case Management
11 Conference, the Court issued its April 1, 2014 Case Management and Pretrial Order [ECF
12 No. 55] setting forth the case schedule. The schedule set pursuant to that Order is set forth
13 below:

Case Event	Filing Date/Disclosure Deadline/Hearing Date
Date to seek leave to add new parties or amend the pleadings	4/30/2014
Updated Joint Case Management Conference Statement	6/12/2014
Further Case Management Conference	6/19/2014 at 11:00 a.m.
ADR completion date	6/18/2014
Non-expert discovery completion date	8/16/2014
Expert disclosures required by Federal Rules of Civil Procedure	8/16/2014
Rebuttal expert disclosures	8/31/2014
Expert discovery completion date	9/30/2014
Last hearing date for dispositive motions and/or further case management conference	11/20/2014, at 9:30 a.m.
Meet and confer re pretrial filings	12/15/2014
Pretrial filings due	1/15/2015
Oppositions, Objections, Exhibits, and Depo Designations due	1/22/2015
Final Pretrial Conference	2/5/2015, at 1:30 p.m.
Trial	2/23/2015, at 8:30 a.m.
Length of Trial	5 days

25 6. On July 10, 2014, the Parties filed a Stipulation Modifying Discovery
26 Deadlines [ECF No. 64], which the Court granted on July 11, 2014 [ECF No. 65]. That
27 stipulation modified the case deadlines as follows:

1	Non-expert discovery completion date	10/24/14
2	Expert disclosures required by Federal Rules of Civil Procedure	10/24/14
3	Rebuttal expert disclosures	11/14/14
4	Expert discovery completion date	12/4/14

5. On August 8, 2014, the Parties filed an updated Joint Case Management
 6 statement [ECF No. 69] explaining that the Parties were still in agreement on resolving
 7 certain key issues by motion for summary judgment prior to continuing discovery on other
 8 factual issues. *See* ECF No. 69 ¶ 15. The Parties also stated that Besser anticipated filing
 9 its Motion for Summary Judgment on September 11, 2014 for hearing on October 16,
 10 2014. *See id.* The Court then vacated the Further Case Management Conference on
 11 August 28, 2014 and set a Further Case Management Conference for October 16, 2014.
 12 [ECF. No. 70].

13. On September 11, 2014, Besser filed its Motion for Summary Judgment
 14 with respect to Nada's claims against Besser [ECF No. 71], which noticed a hearing on
 15 that Motion for October 16, 2014. Nada filed its Opposition to Besser's Motion for
 16 Summary Judgment on September 25, 2014 [ECF No. 84] and briefing closed on that
 17 Motion with Besser's Reply filed on October 2, 2010 [ECF No. 89].

18. On September 11, 2014 PEM filed a Motion for Determination of Good
 19 Faith Settlement [ECF. No. 73]. Besser filed its Opposition to that Motion on September
 20 25, 2014 [ECF. No. 87]. PEM then withdrew its Motion on October 3, 2010. [ECF No.
 21 90].

22. On October 6, 2014, the Court ordered the Parties to file an Updated Joint
 23 Case Management Statement by October 8, 2014 and the Court reset the October 16, 2014
 24 Case Management Conference to October 9, 2014 [ECF No. 91; 92].

1 11. The Parties filed their Updated Joint Case Management Statement on
 2 October 8, 2014 [ECF No. 94], which set forth the following stipulated modifications to
 3 the pretrial schedule:¹

<u>Description</u>	<u>Date(s)</u>
Non-expert discovery completion	December 5, 2014 (extended from October 24, 2014)
Expert disclosures required by Federal Rules of Civil Procedure	December 5, 2014 (extended from October 24, 2014)
Rebuttal expert disclosures	December 19, 2014 (extended from November 14, 2014)
Expert discovery completion	January 9, 2015 (extended from December 4, 2014)
Meet and Confer re: pretrial filings	January 9, 2015 (extended from December 15, 2014)
Pretrial filings due	January 23, 2015 (extended from January 15, 2015)
Oppositions, Objections, Exhibits, and Depo Designations Due	February 2, 2015 (extended from January 22, 2015)
Final Pretrial Conference	February 5, 2015 (no change from February 1, 2014 Case Management and Pretrial Order).
Trial	February 23, 2015 (no change from February 1, 2014 Case Management and Pretrial Order).

15 12. The Court held a Case Management Conference on October 9, 2014.
 16 During that conference, the Court continued the hearing previously set on Besser's Motion
 17 for Summary Judgment until November 6, 2014, which the Court confirmed by Minute
 18 Order on October 10, 2014 [ECF No. 96]. At the October 9, 2014 conference, the Court
 19 did not expressly rule on the Parties' stipulated pretrial deadlines as set forth in their
 20 October 8, 2014 Updated Joint Case Management Statement. Winquist Dec. ¶ 7.
 21 However, based on the Parties' understanding of the Court's statements during the March
 22 27, 2014 Case Management Conference, the Parties understand and have agreed that those
 23 deadlines are effective without further order of the Court because they did not modify the
 24 February 5, 2015 Final Pretrial Conference or February 23, 2015 Trial dates. Winquist
 25 Dec. ¶ 7. It is therefore the Parties' understanding that the schedule set forth in their
 26
 27

28 ¹ The last two entries of the Parties' stipulated schedule erroneously referred to a February 1, 2014 Case Management and Pretrial Order, which does not exist. Each should read "no change from April 1, 2014 Case Management and Pretrial Order."

1 October 8, 2014 Updated Joint Case Management Statement is presently in effect.

2 Winquist Dec. ¶ 7.

3 13. After the Court continued the hearing on Besser's Motion for Summary
4 Judgment until November 6, 2014, the Parties conferred regarding the feasibility of
5 continuing to delay proceeding with additional discovery on factual and expert issues
6 beyond those presented in Besser's Motion for Summary Judgment in light of the rapidly
7 approaching trial date and pretrial deadlines. Winquist Dec. ¶ 10. The Parties agreed that
8 the pretrial schedule could not be further compressed with the existing trial date and that it
9 was in all Parties' best interests to seek a continuance of the February 23, 2015 trial date
10 for 60 days. Winquist Dec. ¶ 10. The Parties reached this agreement in furtherance of
11 their goal from the inception of this case to attempt to resolve or narrow certain key issues
12 by summary judgment prior to incurring the expense of substantial factual and expert
13 discovery on other issues. Winquist Dec. ¶ 10.

14 14. The Parties believe that a 60-day continuance (or as soon thereafter as the
15 Court's calendar may allow) will permit them to obtain the Court's ruling on Besser's
16 Motion for Summary Judgment prior to incurring the expense of additional discovery on
17 issues that will be resolved or narrowed by the summary judgment ruling. Winquist Dec.
18 ¶ 11. This agreement is based on the Parties' understanding that the Court presently
19 anticipates ruling on Besser's Motion for Summary Judgment in late November or early
20 December, 2014. Winquist Dec. ¶ 11. Thus, the Parties have further agreed that in the
21 event that the Court has not ruled on Besser's Motion for Summary Judgment by
22 December 7, 2014, they reserve their respective rights to move the Court for an additional
23 continuance of the trial date or to oppose such a continuance as they each deem
24 appropriate. Winquist Dec. ¶ 11.

25 15. In the event that the Court grants a continuance of the February 23, 2015
26 trial date for 60 days (or as soon thereafter as the Court's calendar may permit), the Parties
27 further request that the Court enter a pretrial scheduling order extending each of the
28

deadlines set forth in the Parties October 8, 2014 Updated Joint Case Management Statement by 60 days. Winquist Dec. ¶ 12.

3 16. The Parties agree that the 60-day trial continuance and extension of pretrial
4 deadlines will not prejudice any Party and will be beneficial to all Parties in permitting
5 them to avoid further discovery and pretrial costs pending the Court’s ruling on Besser’s
6 Motion for Summary Judgment. Winquist Dec. ¶ 13. The Parties believe that a
7 continuance will further promote judicial economy by permitting the issues in this case to
8 be substantially narrowed or resolved prior to significant pretrial preparation, deadlines,
9 and filings. Winquist Dec. ¶ 13. For these reasons, the parties submit that good cause
10 exists for the requested continuance and schedule modification.

11 WHEREFORE, the Parties stipulate and jointly request that the Court continue the
12 February 23, 2015 trial 60 days or as soon thereafter as the Court's calendar permits and
13 enter a pretrial scheduling order extending the deadlines set forth in the Parties' October 8,
14 2014 Updated Joint Case Management Statement by 60 days.

15 STIPULATED AND AGREED This 21st day of October, 2014 between:

MURPHY AUSTIN ADAMS SCHOENFELD LLP
By: /s/ *D. Lisa D. Nicolls*
LISA D. NICOLLS
Attorneys for NADA PACIFIC
CORPORATION and AKKERMANN, INC.

GUICHARD TENG & PORTELLO, A.P.C.
By: /s/ William L. Portello

Parties to submit a chart with the revised deadlines by October 28, 2014.

Dated: October 22, 2014

BAKER & HOSTETLER LLP
By: /s/ Cory M. Curtis *Cory M. Curtis*
CORY M. CURTIS, Judge Laurel Beeler
Attorneys for MESSER COMPANY

